

IN THE MATTER OF
THE IMPASSE DISPUTE

between

JOHNSON COUNTY, IOWA

an

PUBLIC PROFESSIONAL and MAINTENANCE
EMPLOYEES, IUPAT LOCAL 2003

ARBITRATION AWARD

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2003 MAY 15 AM 11:33
PUBLIC EMPLOYMENT
RELATIONS BOARD

APPEARANCES

For the County:

Judy Perkins, Collective Bargaining Representative
Lora Shramek, Human Resources Administrator
Mike Gardner, County Engineer
Alan A. Miller, Assistant County Engineer
Kevin Hackathorn, Maintenance Superintendent

For the Union:

Joe Rasmussen, Business Representative PPME
Gary Tigges, Sign Lead Person
Richard W. Bryant, District Person

In accordance with the provisions of Chapter 20 of the Iowa Code, this Arbitrator was selected by the parties and appointed by the Iowa Public Employment Relations Board to hear and decide the issues which were at impasse. The parties had previously entered into Fact Finding and the Fact Finder, Anna DuVal Smith, issued her Fact Finder's Report dated April 4, 2003.

By agreement of the parties, the arbitration hearing was held on April 29, 2003 at 2:00 p.m. at the Johnson County Office Building, Iowa City. The hearing was electronically recorded. The parties stipulated that there was no dispute as to the arbitrability or negotiability of the items presented to the Arbitrator. No subpoenas had been requested and no stenographic recording had been requested. The parties agreed to submission of the matter to a single arbitrator rather than to a panel of three arbitrators. The parties agreed to extend the May 1st, 2003 deadline for arbitration to May 13th, 2003. It was agreed that the Union would proceed with its presentation first.

In the course of the hearing, both parties submitted their evidence and were given full opportunity to present argument and rebuttal. The parties chose not to submit post-hearing briefs and the hearing was closed at 4:55 p.m. The award set forth below is based upon the Arbitrator's

weighing of all of the facts and arguments submitted, even those which are not specifically referred to herein.

EXHIBITS

Joint Exhibit 1 - Negotiated Agreement 2001-2003

Joint Exhibit 2 - Report of Fact Finder Anna DuVal Smith dated April 4, 2003

Employer Exhibits 1 through 17.

Union Exhibits 1 through 30.

ISSUES AT IMPASSE

The following issues were presented to the Arbitrator:

Issue 1 - Transfer Procedures - Article 5, Job Posting. The Association seeks to add language which would make seniority the determining factor for requests for lateral transfer from one geographic district to another when a vacancy exists, subject to the Employer's right to deny the request for just cause in writing. The Employer proposes and the Fact Finder recommends maintaining the current contract language.

Issue 2 - Overtime Compensation - Article 7, Working Hours-Section 7.2, Overtime. The Union seeks a change which would allow employees to accumulate and use up to 60 hours of compensatory time per year. The Employer agrees to accept the Fact Finder's recommendation to adopt the Union's proposal.

Issue 3 - Leaves of Absence - Article 13, Leaves - Section 13.3(1) and 13.7. The Union seeks to change these sections to allow an employee to take one day of sick leave for the funeral of a friend or a present or retired employee and delete the current language which allows a ½ day paid leave for employee funerals. The Employer proposes and the Fact Finder recommend maintaining the current contract language.

Issue 4 - Wages - Article 16. The Union seeks an increase of 3.5% in each step of Exhibit B, effective July 1, 2003. The Employer proposes a 1.75% increase on July 1, 2003 and a 1.75% increase on January 1, 2004.

Issue 5 - Grievance Procedure - Article 19, Grievances - Section 19.1a, Procedures. The Union proposes adding a sentence to provide that all grievance meetings would be held at a mutually agreed upon time. The Employer and the Fact Finder recommend maintaining the current contract language.

Issue 6 - Insurance - Article 14, Insurance - Section 14.1, Health Insurance. The parties

agreed to amend Section 14.1, Health Insurance to read as follows: The Employer shall pay the entire monthly premium cost for full-time employees health and dental, including family health, but the employee shall pay the portion of the monthly premium for family dental. The employee must sign up for health and dental insurance coverage within 30 days after full-time status is obtained to participate in these plans. Iowa 500 Alliance Select, or its equivalent, will be the only health insurance plan available.

BACKGROUND

Johnson County, Iowa is the fifth largest county in Iowa by population (111,000). It is the home of the University of Iowa and the northern portion of the county is part of an urban corridor which includes Cedar Rapids, Iowa, the southern portion of Linn County and Iowa City, Iowa. Aside from this urbanized area, Johnson County is largely rural. The members of the bargaining unit work out of seven district offices in the county in addition to the central location in Iowa City, Iowa. The residences of bargaining unit members are located throughout the county.

The parties have historically used and accept for the purposes of this arbitration a comparability group which consists of the eastern Iowa counties of Johnson, Linn, Dubuque, Black Hawk, Scott and Clinton. These counties contain the larger cities in eastern Iowa and the county seats of these counties are urban areas. In terms of population, Johnson County is in the middle of the comparability group.

The Employer concedes that it is making no argument of inability to pay or inability to tax.

Johnson County employs approximately 475 employees, over half of whom are represented by six different bargaining units. The secondary roads unit which is the subject of this arbitration consists of 38 employees. The Union has represented this bargaining unit for over 25 years and have never proceeded to impasse arbitration before.

DISCUSSION

By statutory mandate, the Arbitrator must choose among the Fact Finder's recommendation, the Union's final offer and the Employer's final offer on each issue at impasse. The Iowa Code further provides that the Arbitrator must select, without alteration, the most reasonable of the three positions on each of the items at impasse and consider the statutory criteria in arriving at the decision as to which is the most reasonable. The statutory criteria specified in Iowa Code Section 20.22(9) include:

- a.) Past collective bargaining contracts and bargaining history;
- b.) Comparison of wages, hours and conditions of employment of the involved public employees doing comparable work, including consideration of factors peculiar to

the area and classifications;

- c.) The interests and welfare of the public, the ability of the employer to finance the costs involved and the effect of such costs on the normal standard of services;
- d.) The power of the public employer of levy taxes and appropriate funds for it's operations;
- e.) Any other relevant factors.

UNION'S POSITION

Issue 1 - Transfer Procedures. The Union's proposal would add lateral transfer rights for employees seeking to fill vacancies occurring in other districts (satellite sheds). The transfer rights would be based upon seniority and would not allow bumping because they would occur only in cases of vacancies. After the Fact Finder's recommendation against addition of this language, the Union in its final offer added language which would allow the Employer to deny the transfer request for just cause in writing.

The Union believes this language is necessary because of a series of grievance mediations which occurred when 3 employees bid on transfer to a vacant position and the employee with the most seniority did not receive the assignment. The Union believes that when seniority is not used as the determining factor, the assignment of a less senior employee to fill the vacancy raises concerns about favoritism. Because of the way the satellite sheds are spread throughout the county and because not all bargaining unit members live in Iowa City, the Union believes that the most senior employee should be allowed to transfer to satellite sheds closest to their home if a vacancy is available.

With the addition of the language which allows the Employer to depart from seniority for just cause, the Union believes that any objections raised by the Employer due to qualifications or competency issues are no longer valid.

Issue 2 - Overtime Compensation. The parties agree that the following language should be added to Section 7.2, Overtime: Employees may accumulate and use up to sixty (60) hours of compensatory time per calendar year.

Issue 3 - Leaves of Absence. The Union proposes to delete language allowing one half day of paid absence for attending the funeral of an employee. The Union proposes substitution of language in Section 13.3(1) which would allow use of sick leave of one day for the funeral of a friend or present or retired employee. The Union believes that in many cases one half day is insufficient for a funeral because of the geographic spread of work locations in the county and because of the need for bargaining unit employees to report to work, move equipment and then change clothes in the event of a funeral and then perhaps change clothes again to return to work. This need for change of clothes and travel time often makes the one half day limitation on funeral leave inadequate.

The recent death of an employee when combined with alleged representations made by the Employer resulted in a grievance which involved this provision of the current contract. The grievance was resolved with the employees being allowed one half day funeral leave and one half day sick leave.

The Union believes that the cost of this proposal is minimal and perhaps even financially beneficial to the Employer and would avoid similar grievances in the future.

Issue 4 - Wages. The Union proposes a 3.5% across the board wage increase effective July 1, 2003. Examination of the comparability group (Union Exhibit 19) shows that the average increase to date is 3.4%. Johnson County secondary road department employees currently rank first in wages among the comparability group and have historically ranked first in the comparability group. The Union believes that its proposal of 3.5% is the most reasonable in terms of maintaining Johnson County secondary road department employees in the first position among the comparability group.

The Union also asserts that the bargaining history of wage increases since 1988 shows annual across the board increases which generally exceed 3.5% (Union Exhibit 21).

The county compensation board recommended a maximum increase for elected officials in Johnson County of 5% and those officials have had a history of increases generally exceeding 3.5% in the last fiscal year. (Union Exhibit 22). State wide wage settlement to date have generally equaled or exceeded 3.5% (Union Exhibit 23).

With the consumer price increase for the year 2002 at 2.4%, an increase in excess of that amount is necessary to maintain the employees standard of living. The bargaining history of the parties has been to arrive at a wage increase in excess of the consumer price index increase. The Union also believes that the Arbitrator should consider the fact that the Employer has removed from the contract a permissive subject of bargaining, the uniform allowance, which represents a loss of \$400.00 per year per employee.

Finally, the Union believes that the proper comparability group for its bargaining unit members is other counties' secondary road units not other Johnson County bargaining unit employees.

Issue 5 - Grievance Procedure. The Union proposes additional language to Section 19.1a which would provide that grievance meetings would take place at mutually agreed times. This issue arises out of the fact that the current contract language provides that time spent by Union representatives investigating or processing a grievance is to be done without pay unless permission for such time investigating or processing is granted in advance by the Employer. The asserted need for a change results from the fact that a Union steward recently asked for such permission and permission was denied. He was then required to use vacation time to attend a grievance meeting.

The Union believes that this is unfortunate and unnecessary and that if the parties were required to agree on the scheduling of a grievance meeting this problem could be avoided. The Union believes that the Employer's control over whether a Union representative will be paid for investigating or attending grievance matters during working hours negatively impacts the member's right to representation at critical times. The Union believes that a solution to this problem is to require mutual agreement as to the time for grievance proceedings, which could then avoid working hours if necessary.

Issue 6 - Insurance. The parties agreed at Fact Finding to change Section 14.1 to read as follows: The Employer shall pay the entire monthly premium cost for full-time employees health and dental, including family health, but the employee shall pay the portion of the monthly premium for family dental. The employee must sign up for health and dental insurance coverage within 30 days after full-time status is obtained to participate in these plans. Iowa 500 Alliance Select, or its equivalent, will be the only health insurance plan available.

EMPLOYER'S POSITION

Issue 1 - Transfer Procedures. The Employer proposes adoption of the Fact Finder's recommendation of maintaining the current contract language. In support of maintaining the current contract language, the Employer argues that it is necessary to evaluate the individual employee's qualifications for the job which is vacant to determine whether that employee can do the work required of that position in the applicable satellite shed. The Employer described the process involved in filling vacancies, which included determining the qualifications necessary for the job which was open, reviewing the annual job appraisals for the applicants to the position, review of the personnel files for the applicants, interviewing the applicants and observing them actually operating the equipment necessary to perform the job which was vacant (Employer Exhibit 3). After this evaluation, the vacancy was filled by the most qualified candidate. The Employer argued that the issue of the employee's residence in relation to the place of work should not be given much weight by the Arbitrator because vacancies in the outer shop locations are filled only by those employees who apply for them, making such postings a voluntary choice by the employee.

Issue 2 - Overtime Compensation. Both parties have accepted the Fact Finder's recommendation as set forth above.

Issue 3 - Leaves of Absence. The Employer believes that it is logically inconsistent for an employee to take sick leave (thereby implying illness) for half of a day and taking funeral leave for the other half day. The Employer believes that it is more appropriate for the employee to use vacation or comp time for the additional half day, if the employee attending a funeral chooses to take the remaining half day off. The Employer also argues that the contract for the bargaining unit is consistent with the contracts for other bargaining units in Johnson County. In the comparability group only three of the six counties have any policy on this issue, making the comparability argument less than compelling. The Employer argues that the acceptance by the Union of the Employer's response to the recent grievance is binding on the Union as a matter of

bargaining history.

Issue 4 - Wages. The Employer proposes to implement a 1.75% across the board increase on July 1, 2003 and another 1.75% across the board increase on January 1, 2004. The result of this offer is that after the second phase is effective the Employer's proposal is a larger increase (3.53%) than the Union has proposed. (Employer Exhibit 16)

The Employer admits that the uniform allowance provision was withdrawn from negotiations as a permissive subject bargaining but that the intent of the Employer is to allow employees to purchase uniforms and be reimbursed in an amount equal to what the Employer would have had to pay to purchase the uniforms. As a result, the members of the bargaining unit will not suffer any financial loss. The Employer also points out that although the county compensation board authorized up to a 5% increase for elected officials, the actual adopted increase was only 3%.

The Employer also argues in favor of its wage proposal that other bargaining units in Johnson County have agreed to this arrangement and that non-bargaining unit employees will be increased in the same fashion. The Employer believes that it is important to have consistency across the bargaining units in Johnson County. The Employer also believes that under its proposal Johnson County road workers would remain the highest paid group in the comparability group (Employer Exhibit 11). This would be true both on July 1, 2003 and January 1, 2004. Settlements in the comparability group are all in the range of 3.25% and 3.5% (Employer Exhibit 6). The two stage increase proposed by the Employer maintains internal comparability with Johnson County units and does not effect Johnson County road workers' relative positions among the external comparability group.

The Employer also argues that the Arbitrator should take into account the total package cost including the insurance cost increases which the parties have agreed to. The Employer believes that the insurance costs increase is 7.97%, even after the premium adjustment brought about by the insurance changes agreed to between the parties.

Issue 5 - Grievance Procedure. The Employer believes that the grievance which brought this issue to the table was caused by a misunderstanding or an oversight by an employee rather than a deficiency in the contract language. The Employer is not aware of anyone requesting time off for the grievance in question. Because this matter came up as a result of an error, the Employer does not believe that there has been any showing of need for a change in the contract language. The Employer asserts that the Union can not show that anyone has not been paid for time investigating or attending a grievance proceeding. The Employer also argues that internal comparability shows that other Johnson County bargaining units have the same or comparable language as do comparable units in the external comparability group.

Issue 6 - Insurance. The parties have agreed on insurance language as set forth above.

FACT FINDER'S RECOMMENDATION

Issue 1 - Transfer Procedures. The Fact Finder recommends maintaining the current contract language because of a lack of showing of need for change, no direct financial impact and no comparability data. The Fact Finder determined that the Employer's need to evaluate skills and assign work based upon skills, dictated a recommendation of no change in the current contract language. The Fact Finder did not have before her the Union's latest proposal of allowing the Employer to override seniority for just cause in writing.

Issue 2 - Overtime Compensation. Both parties accepted the Fact Finder's recommendation to increase compensatory time accrued to sixty (60) hours.

Issue 3 - Leaves of Absence. The Fact Finder recommended maintaining the current contract language. The Fact Finder recognized the difficulty of travel and change of clothes when a funeral was involved, but based upon the lack of financial impact and the availability of other means to take time off, specifically vacation or compensatory time, the Fact Finder recommended no change in the current contract language.

Issue 4 - Wages. Faced with the Employer's proposal of a 3% across the board increase and the Union's proposal of a 3.5% across the board increase, the Fact Finder recommended adoption of the Union's proposal of 3.5%. This recommendation was based upon the information which showed an average increase in the external comparability group of 3.4%. In addition, there was no issue regarding ability to pay or ability to tax. Finally, while a 3% increase would maintain the position of Johnson County road workers as the highest paid in the comparability group, a 3% increase would begin to erode that position relative to employees doing similar work. The Fact Finder did not have before her the Employer's latest proposal of a two step 1.75/1/75 increase.

Issue 5 - Grievances. Based upon a lack of showing of need for change, the Fact Finder recommended maintaining the current contract language.

Issue 6 - Insurance. The Fact Finder made no finding on this issue because the parties agreed to contract language on this issue.

FINDINGS OF FACT

ISSUE 1 - TRANSFER PROCEDURES

1. Past Collective Bargaining and Contracts. The Union has not shown any substantial need for a change in the job posting provisions of the current contract language. The Employer has demonstrated a substantial need to tie specific job requirements to employee qualifications.

2. Comparability. No comparability data was provided showing a compelling need to change the current contract language.

3. Ability to Pay. This element of the criteria is not applicable to this discussion.
4. Ability to Tax. This element of the criteria is not applicable to this discussion.
5. Other Relevant Factors. None.

ISSUE 2 - OVERTIME COMPENSATION

Discussion of the criteria is not necessary due to the parties agreement to proposed contract language.

ISSUE 3 - LEAVES OF ABSENCE

1. Past Collective Bargaining and Contracts. Despite the existence of a recent grievance which involved this issue, the Union has not shown any compelling need for a change in the contract language. That grievance was resolved voluntarily and the members of the bargaining unit have the ability to deal with the problem of travel time, equipment movement and changing of clothes through another mechanism when necessary.

2. Comparability. No comparability information was provided change to the current contract language.

3. Ability to Pay. This element of the criteria is not applicable to this discussion.

4. Ability to Tax. This element of the criteria is not applicable to this discussion.

5. Other Related Factors. None.

ISSUE 4 - WAGES

1. Past Collective Bargaining and Contracts. The history of bargaining between the parties shows wage increases equal to or greater than the other counties in the comparability group with respect to the road units. The evidence shows that in the traditional comparability group this year wage increases have averaged 3.4%. In the comparability group the wage increases become affective July 1, 2003. Under the statutory criteria the internal comparability with respect to other Johnson County units is not applicable because of the differing job responsibilities.

2. Comparability. The evidence shows that in the traditional comparability group this year wage increases have averaged 3.4%. In the comparability group the wage increases all become affective July 1, 2003. Under the statutory criteria the internal comparability with respect to other Johnson County units is not applicable because of the differing job

responsibilities.

3. Ability to Pay. The Employer has not argued an inability to pay.
4. Ability to Tax. The Employer has not argued an inability to tax.
5. Other Relevant Factors. None.

ISSUE 5 - GRIEVANCES

1. Past Collective Bargaining and Contracts. The Union has not shown any compelling need for a change in the language related to payment for grievance investigating or the grievance hearing itself during working hours. The only incident cited by the Union is alleged by the Employer to have been a failure by the employee to request payment. One isolated incident does not rise to the level required to implement a contract language change in the absence of a bargained solution.

2. Comparability. No comparability information was provided showing a compelling need for a change to the current contract language.

3. Ability to Pay. The settlement of the criteria is not applicable to this discussion.
4. Ability to Tax. The settlement of the criteria is not applicable to this discussion.
5. Other Relevant Factors. None.

ISSUE 6 - INSURANCE

The parties have agreed to contract language on this issue.

CONCLUSIONS OF LAW

In accordance with the statutory criteria imposed upon the Arbitrator, the Arbitrator determines as follows:

Issue 1 - Transfer Procedures. The Employer's proposal of no change in language to Article 5, Job Posting is the most reasonable of the proposals and is adopted.

Issue 2 - Overtime Compensation. The parties have agreed to accept the Fact Finder's recommendation to change the sixth sentence of Section 7.2, Overtime, to read as follows: Employees may accumulate and use up to sixty (60) hours of compensatory time per calendar year. The language shall become part of the collective bargaining agreement effective July 1,

2003.

Issue 3 - Leaves of Absence. The Fact Finder's recommendation, accepted by the Employer, that there be no change to Sections 13.3(1) and 13.7 of the contract is the most reasonable of the proposals and is adopted.

Issue 4 - Wages. The Fact Finder's recommendation, accepted by the Union, providing for a 3.5% across the board increase in each step of Exhibit B, effective July 1, 2003 is the most reasonable of the proposals and is adopted.

Issue 5 - Grievance Procedures. The Fact Finder's recommendation, accepted by the Employer, of maintaining the current contract language for Article 19, Grievances is the most reasonable of the proposals and is adopted.

Issue 6 - Insurance. The Arbitrator adopts the agreement by the parties to change Section 14.1, Health Insurance to read as follows: The Employer shall pay the entire monthly premium cost for full-time employees health and dental, including family health, but the employee shall pay the portion of the monthly premium for family dental. The employee must sign up for health and dental insurance coverage within 30 days after full-time status is obtained to participate in these plans. Iowa 500 Alliance Select, or its equivalent, will be the only health insurance plan available.

DATED this 13th day of May, 2003.


JAMES A. O'BRIEN, Arbitrator

I certify that on the 13th day of May, 2003, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Judith Perkins
1321 Coll Drive
Iowa City, IA 52246-4111

Joe Rasmussen
P.O. Box 69
Alburnett, IA 52202

I further certify that on the 13th day of May, 2003, I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.